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6 **BEFORE THE**
7 **CALIFORNIA BOARD OF ACCOUNTANCY**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. AC 2010 35

11 **MILLIARD CHRISTOPHER CALDWELL**
12 **P. O. Box 3338**
13 **Costa Mesa, CA 92628**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

14 **Certified Public Accountant Certificate**
15 **No. 24276**

Respondent.

16 **FINDINGS OF FACT**

17 1. On or about February 4, 2011, Complainant Patti Bowers, in her official capacity as
18 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs,
19 filed Accusation No. AC 2010 35 against Milliard Christopher Caldwell (Respondent) before the
20 California Board of Accountancy. (Accusation attached as Exhibit A.)

21 2. On or about March 18, 1977, the California Board of Accountancy (Board) issued
22 Certified Public Accountant Certificate No. 24276 to Respondent. The Certified Public
23 Accountant Certificate expired on October 1, 2007, and has not been renewed. Pursuant to
24 Business and Professions Code section 5109, the expiration of a license, practice privilege, or
25 other authority to practice public accountancy shall not deprive the Board of jurisdiction to
26 commence or proceed with any investigation of or action or disciplinary proceeding against the
27 licensee, or to render a decision suspending or revoking the license.
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1 3. On or about March 11, 2011, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. AC 2010 35, Statement to Respondent, Notice of Defense,
3 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
4 and 11507.7) at Respondent's address of record which, pursuant to California Code of
5 Regulations, title 16, section 3, is required to be reported and maintained with the Board, which
6 was and is:

7 P. O. Box 3338
8 Costa Mesa, CA 92628.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
11 124.

12 5. On or about April 4, 2011, the aforementioned documents were returned by the U.S.
13 Postal Service marked "No Forwarding Address." The address on the documents was the same as
14 the address on file with the Board. Respondent failed to maintain an updated address with the
15 Board and the Board has made attempts to serve the Respondent at the address on file.
16 Respondent has not made himself available for service and therefore, has not availed himself of
17 his right to file a notice of defense and appear at hearing.

18 6. Government Code section 11506 states, in pertinent part:

19 (c) The respondent shall be entitled to a hearing on the merits if the respondent
20 files a notice of defense, and the notice shall be deemed a specific denial of all parts
21 of the accusation not expressly admitted. Failure to file a notice of defense shall
22 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
23 may nevertheless grant a hearing.

24 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
25 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
26 AC 2010 35.

27 8. California Government Code section 11520 states, in pertinent part:

28 (a) If the respondent either fails to file a notice of defense or to appear at the
hearing, the agency may take action based upon the respondent's express admissions
or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

1 9. Pursuant to its authority under Government Code section 11520, the Board finds
2 Respondent is in default. The Board will take action without further hearing and, based on the
3 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
4 taking official notice of all the investigatory reports, exhibits and statements contained therein on
5 file at the Board's offices regarding the allegations contained in Accusation No. AC 2010 35,
6 finds that the charges and allegations in Accusation No. AC 2010 35, are separately and severally,
7 found to be true and correct by clear and convincing evidence.

8 10. Taking official notice of its own internal records, pursuant to Business and
9 Professions Code section 5107, it is hereby determined that the reasonable costs for Investigation
10 and Enforcement is \$6,074.95 as of May 4, 2011.

11 DETERMINATION OF ISSUES

12 1. Based on the foregoing findings of fact, Respondent Milliard Christopher Caldwell
13 has subjected his Certified Public Accountant Certificate No. 24276 to discipline.

14 2. The agency has jurisdiction to adjudicate this case by default.

15 3. The California Board of Accountancy (CBA) is authorized to revoke Respondent's
16 Certified Public Accountant Certificate based upon the following violations alleged in the
17 Accusation which are supported by the evidence contained in the Default Decision Evidence
18 Packet in this case:

19 a. Under Business and Professions Code (hereinafter referred to as section)
20 section 5100, subdivision (g), in conjunction with sections 5050 and 5051, on the grounds for
21 unprofessional conduct in that Respondent willfully practiced and held himself out as a Certified
22 Public Accountant when he failed to have a valid license when he signed an IRS Form 2848,
23 Power of Attorney designating himself a Certified Public Accountant (CPA) on May 1, 2008,
24 signed an IRS Form 8879 on June 2, 2008, as a CPA, and advertised on his website in 2009 that
25 he is a CPA even though his license had expired on September 30, 2007.

26 b. Under section 5100, subdivision (k), in that Respondent misappropriated funds or
27 obtained money by fraudulent means or false pretenses by cashing two payments for the same
28 service instead of refunding the duplicate payment.

1 c. Under section 5100, subdivision (g), in conjunction with California Code of
2 Regulations, title 16, section 52, subdivision (a) and (b), in that Respondent knowingly and
3 willingly failed to respond to inquiries by the CBA, including failing to respond to a subpoena,
4 letters and multiple phone calls requesting information regarding the investigation.

5 d. Under section 5100, subdivision (g), in conjunction with California Code of
6 Regulations, title 16, section 3, in that Respondent failed to notify the Board of a change in his
7 address of record.

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ORDER

IT IS SO ORDERED that Certified Public Accountant Certificate No. 24276, heretofore issued to Respondent Milliard Christopher Caldwell is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on Aug. 27, 2011.

It is so ORDERED July 28, 2011



FOR THE CALIFORNIA BOARD OF
ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS

80498787.DOC
DOJ Matter ID: SD2010702685

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 CARL W. SONNE
Deputy Attorney General
4 State Bar No. 116253
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Attorneys for Complainant

8
9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. AC 2010 35

12 **MILLIARD CHRISTOPHER**
CALDWELL,

13 P. O. Box 3338
Costa Mesa, CA 92628

14 150 Paularino #142,
15 Costa Mesa, CA 92626

16 Certified Public Accountant Certificate No.
24276

A C C U S A T I O N

17
18 Respondent.

19 Complainant alleges:

20 **PARTIES**

21 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
22 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

23 2. On or about March 18, 1977, the California Board of Accountancy issued Certified
24 Public Accountant Certificate Number 24276 to Milliard Christopher Caldwell (Respondent).
25 The Certified Public Accountant Certificate expired on October 1, 2007, and has not been
26 renewed. The validity of Respondent's license fluctuated from its date of issuance as follows:¹

27 ¹ The California Board of Accountancy's licensing records were transferred to the
28 Department of Consumer Affairs' centralized computer system in March of 1989. As a result, the
(continued...)

Dates of Valid License	Dates of Invalid License	Unpaid Fees	No Cont. Ed.
03/1989- 09/30/1989	10/01/1989-12/05/1989	X	X
12/06/1989-09/30/1991	10/01/1991-10/20/1991	X	X
10/21/1991-09/30/1993	10/01/1993-03/01/1995	X	X
03/02/1995-09/30/1995	10/01/1995-04/07/1996	X	X
04/08/1996-09/30/1997	10/01/1997-03/01/1999	X	X
03/02/1999-09/30/1999 - ("inactive")	10/01/2001-10/17/2001	X	X
10/01/1999-09/30/2001	10/01/2003-12/28/2003	X	X
10/18/2001-09/30/2003	10/01/2007-Present ("delinquent")		
12/29/2003-09/30/2007			

JURISDICTION

3. This Accusation is brought before the California Board of Accountancy (CBA), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

underlying documentation related to license history prior to March 1989 is unavailable.

STATUTORY PROVISIONS

4. Section 5050, subdivision (a), states:

Except as provided in subdivision (b) and (c) of this section, in subdivision (a) of Section 5054, and in Section 5096.12, no person shall engage in the practice of public accountancy in this state unless the person is the holder of a valid permit to practice public accountancy issued by the board or a holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096.)

5. Section 5051 states:

Except as provided in Sections 5052 and 5053, a person shall be deemed to be engaged in the practice of public accountancy within the meaning and intent of [Chapter 1 of Division 3 (commencing with Section 5000)] if he or she does any of the following:

(a) Holds himself or herself out to the public in any manner as one skilled in the knowledge, science, and practice of accounting, and as qualified and ready to render professional service therein as a public accountant for compensation.

(b) Maintains an office for the transaction of business as a public accountant.

(c) Offers to prospective clients to perform for compensation, or who does perform on behalf of clients for compensation, professional services that involve or require an audit, examination, verification, investigation, certification, presentation, or review of financial transactions and accounting records.

(d) Prepares or certifies for clients reports on audits or examinations of books or records of account, balance sheets, and other financial, accounting and related schedules, exhibits, statements, or reports that are to be used for publication, for the purpose of obtaining credit, for filing with a court of law or with any governmental agency, or for any other purpose.

(e) In general or as an incident to that work, renders professional services to clients for compensation in any or all matters relating to accounting procedure and to the recording, presentation, or certification of financial information or data.

(f) Keeps books, makes trial balances, or prepares statements, makes audits, or prepares reports, all as a part of bookkeeping operations for clients.

(g) Prepares or signs, as the tax preparer, tax returns for clients.

(h) Prepares personal financial or investment plans or provides to clients products or services of others in implementation of personal financial or investment plans.

(i) Provides management consulting services to clients.

1 The activities set forth in subdivisions (f) to (i), inclusive, are "public
2 accountancy" only when performed by a certified public accountant or public
3 accountant, as defined in this chapter.

4 A person is not engaged in the practice of public accountancy if the only
5 services he or she engages in are those defined by subdivisions (f) to (i), inclusive,
6 and he or she does not hold himself or herself out, solicit, or advertise for clients
7 using the certified public accountant or public accountant designation. A person is
8 not holding himself or herself out, soliciting, or advertising for clients within the
9 meaning of this section solely by reason of displaying a CPA or PA certificate in his
10 or her office or identifying himself or herself as a CPA or PA on other than signs,
11 advertisements, letterhead, business cards, publications directed to clients or potential
12 clients, or financial or tax documents of a client.

13 6. Section 5070.5, subdivision (a), states:

14 A permit issued under [Chapter 1, commencing with section 5000.1] to a
15 certified public accountant or a public accountant expires at 12 midnight on the last
16 day of the month of the legal birthday of the licensee during the second year of a
17 two-year term if not renewed.

18 To renew an unexpired permit, a permitholder shall, before the time at which
19 the permit would otherwise expire, apply for renewal on a form prescribed by the
20 board, pay the renewal fee prescribed by this chapter and give evidence satisfactory to
21 the board that he or she has complied with the continuing education provisions of this
22 chapter.

23 7. Section 5100 states, in pertinent part:

24 After notice and hearing the board may revoke, suspend, or refuse to renew any
25 permit or certificate granted under Article 4 (commencing with Section 5070) and
26 Article 5 (commencing with Section 5080), or may censure the holder of that permit
27 or certificate for unprofessional conduct that includes, but is not limited to, one or any
28 combination of the following causes:

.....

(g) Willful violation of this chapter or any rule or regulation promulgated by the
board under the authority granted under this chapter. . . .

.....

(k) Embezzlement, theft, misappropriation of funds or property, or obtaining
money, property, or other valuable consideration by fraudulent means or false
pretenses.

8. Section 5109 of the Code provides:

The expiration, cancellation, forfeiture, or suspension of a license, practice
privilege, or other authority to practice public accountancy by operation of law or

1 by order or decision of the board or a court of law, or the voluntary surrender of a
2 license by a licensee shall not deprive the board of jurisdiction to commence or
3 proceed with any investigation of or action or disciplinary proceeding against the
4 licensee, or to render a decision suspending or revoking the license.

5 REGULATORY PROVISIONS

6 9. California Code of Regulations, title 16, section 3, states in part:

7 Each licensee shall notify the Board of any change in his or her address of
8 record within 30 days after the change. The address of record is public information.
9 If the address of record is a post office box or mail drop, the change of address
10 notification shall include the street address of either the licensee's primary place of
11 employment or his or her residence.

12 10. California Code of Regulations, title 16, section 52, subdivision (a) and (b) state:

13 (a) A licensee shall respond to any inquiry by the Board or its appointed
14 representatives within 30 days. The response shall include making available all files,
15 working papers and other documents requested.

16 (b) A licensee shall respond to any subpoena issued by the CBA or its
17 executive officer or the assistant executive officer in the absence of the executive
18 officer within 30 days and in accordance with the provisions of the Accountancy
19 Act and other applicable laws or regulations.

20

21 COST RECOVERY

22 11. Section 5107, subdivision (a), states:

23 The executive officer of the board may request the administrative law judge, as
24 part of the proposed decision in a disciplinary proceeding, to direct any holder of a
25 permit or certificate found to have committed a violation or violations of this chapter
26 to pay to the board all reasonable costs of investigation and prosecution of the case,
27 including, but not limited to, attorneys' fees. The board shall not recover costs
28 incurred at the administrative hearing.

29 FACTUAL SUMMARY

30 12. On or about April 27, 2009, the CBA received a complaint alleging that Respondent
31 made errors on the individual income tax returns of the complainant, P.D. The complaint also
32 alleged that Respondent failed to represent P.D. in an IRS audit and failed to return monies
33 arising from P.D.'s double payment for services.

34 13. According to P.D.'s complaint, in May 2008, P.D. and P.D.'s husband were notified
35 by the IRS that their 2005 and 2006 tax returns were being audited for excessive mortgage

1 interest. Respondent, who had prepared their tax returns, prepared a power of attorney form and
2 told P.D. and her husband that he was familiar with the tax rules on mortgage interest limits. In
3 June 2008, Respondent completed P.D. and her husband's 2007 Federal individual income tax
4 return. The 2007 tax year return was added to the IRS audit. In early July 2008, P.D. and her
5 husband received a phone call from the IRS auditor who stated she had attempted several times to
6 contact Respondent and not been successful. P.D. and her husband were also unable to contact
7 Respondent. The IRS auditor completed the audit at the end of July 2008, without contact with
8 Respondent. On August 11, 2008, P.D. and her husband sent Respondent a letter via certified
9 mail, including a copy of the IRS adjustments and requesting Respondent to "take a look" and get
10 back to them within the 30 day window of acceptance. Respondent signed for the letter on
11 August 18, 2008, but did not contact P.D. or her husband.

12 14. In September 2008, P.D. and her husband hired a private detective to contact
13 Respondent to find out whether Respondent was still in business. Respondent spoke to the
14 private investigator and informed him that he would contact P.D. and her husband the next day.
15 Respondent never contacted P.D. or her husband. P.D. and her husband's IRS Income Tax
16 Examination Changes form dated October 2, 2008 reflects adjustments made to mortgage interest
17 on schedule E and schedule A, itemized deductions for 2005, 2006 and 2007. The adjustments
18 resulted in additional tax of \$3,642 for 2005, \$5,698 for 2006, and \$4,005 for 2007. Interest was
19 assessed at \$1,507.53 but no penalties were assessed.

20 15. In August 2008, P.D. noticed Respondent had not cashed the \$695 check given to him
21 in early June for preparation of her 2007 tax return. Thereafter on August 2, 2008, P.D. faxed
22 Respondent a note requesting that he destroy the check and indicated that she was sending him a
23 money order (or cashiers check). P.D. sent the cashier's check; however, Respondent cashed
24 P.D.'s original check. On January 6, 2009, P.D. sent Respondent a letter requesting return of the
25 \$695 overpayment, the interest incurred in the audit, and a \$468.92 penalty. On March 19, 2009,
26 P.D. again requested reimbursement for the bill overpayment, interest and penalties.

27 16. During an interview with the Investigative CPA (investigator), P.D. explained that
28 Respondent had prepared her tax returns for approximately 20 years including 2005 and 2006.

1 The mortgage interest was the only IRS adjustment made to itemized deductions and it dealt with
2 mortgage interest on loans in excess of the \$1,000,000 limit and \$100,000 equity limit. The
3 Power of Attorney (POA) form was dated May 1, 2008 and was signed by Respondent and P.D.
4 and her husband. The POA was for tax matters concerning Form 1040 for years 2005, 2006,
5 2007 and 2008. Respondent used the CPA title on the form and noted his designation as being a
6 CPA. P.D. also provided Form 8879 signed by Respondent using the CPA title dated June 2,
7 2008, transmittal letter for P.D.'s 2007 return dated June 3, 2008 signed by Respondent using the
8 CPA title, and page 2 of P.D.'s 2007 form 1040 showing Respondent as the paid preparer.

9 17. On May 21, 2009, an enforcement letter was sent to Respondent notifying him of
10 P.D.'s complaint and requesting a written response. The letter also notified Respondent that CBA
11 records reflected that his license expired on September 30, 2007 and consequently he did not have
12 practice rights. Included with the letter was a copy of the September 30, 2007, license renewal
13 form and CE reporting worksheet for Respondent to fill out. The letter was sent via certified mail
14 to Respondent's address of record, P.O. Box 3338, Costa Mesa, CA, and to his other address with
15 the CBA, 150 Paularino, #142, Costa Mesa, CA. On June 29, 2009, the letter sent certified to
16 Respondent's P.O. Box was returned as unclaimed with the envelope marked "vacant" and a note
17 from the post office informing the sender of a new address. The letter sent certified mail to
18 Respondent's other address was not returned, nor was the green return receipt card.

19 18. On May 26, 2009, the investigator performed a web search and discovered a website
20 for Respondent - "www.caldwellcpa.net." The website had Respondent's picture and contact
21 information showing both his address of record and his other address with the CBA. On July 1,
22 2009, the investigator called Respondent at the telephone number on his CBA records and on his
23 website. The answering machine stated "office of Chris Caldwell, CPA". The investigator left a
24 message stating he was calling about a complaint, the certified mail being returned, and asking
25 Respondent to contact him. On July 1, 2009, the investigator faxed a copy of the May 21, 2009
26 letter to Respondent at the fax number shown on his website. On the fax transmittal, the
27 investigator requested Respondent contact him and notified Respondent that a failure to respond
28 could result in an enforcement action being taken against his license. On August 3, 2009, the

1 investigator telephoned Respondent and again left a message on Respondent's answering machine
2 requesting him to return the call.

3 19. On August 13, 2009, the investigator received a telephone call from "Gina" who
4 stated she worked for Respondent. The telephone number on the caller ID reflected that the call
5 came from Respondent's phone number. The investigator informed Gina of the investigation and
6 asked if she or Respondent had a copy of the CBA's May 21, 2009 letter. When Gina stated that
7 she did not but Respondent may, the investigator told Gina that he would fax a copy of the letter
8 to her. Gina stated that Respondent was not in the office and had been ill. Gina stated that she
9 does secretarial work, and is not a CPA. On August 13, 2009, the investigator again faxed a copy
10 of the May 21, 2009 letter to Respondent.

11 20. On September 28, 2009 a subpoena was sent, via certified and regular mail to
12 Respondent at both addresses of record, ordering Respondent to produce by October 28, 2009 the
13 following items:

- 14 • Confirmation that he agreed to assist P.D. with the IRS examination.
- 15 • Confirmation that he provided P.D. with a Form 2848.
- 16 • An explanation for why he did not respond to the attempted contacts by the IRS
17 auditor and P.D.
- 18 • An explanation for why he accepted duplicate payments of \$695 from P.D. for
19 preparation of her 2007 income taxes.

20 21. The subpoena also requested Respondent to provide the following information:

- 21 • A statement indicating whether he had practiced public accountancy from October 1,
22 2007 to the present. Respondent was asked to submit a listing that depicted the composition of
23 his public accounting practice, by the percentage of services provided for taxes, compilations,
24 reviews, audits, management consulting, and other services.
- 25 • The completed "Certified Public Accountant/Public Accountant Renewal Form, Parts
26 A and B", for his delinquent 2007 and 2005 license renewals.
- 27 • The completed "Continuing Education Verification Reporting Form" enclosed for his
28 September 30, 2007 renewal if he intended to renew in active status.

- A listing of CE courses completed from October 1, 2007 to the present.
- Payment of the \$300 renewal fees.
- A copy of one client income tax return (Form 1040) completed and issued for each of the years 2007 and 2008.

22. The copy of the subpoena sent to the P. O. Box address was returned to the CBA. The certified mail receipt for the copy sent to 150 Paularino #142, Costa Mesa, CA was received at the CBA. "M. C. Caldwell" signed for the envelope on or about October 2, 2009. On January 19, 2010, Respondent called the investigator. The investigator told Respondent that he needed to respond to the subpoena, that he needed to complete his CE and get licensed and stop practicing. Respondent stated that he was no longer practicing. The investigator requested evidence of Respondent's medical problems. Respondent stated he would get his response done by January 21, 2010. To date, Respondent has not responded to the subpoena.

23. On January 26, 2010, the investigator emailed the FTB inquiring about Respondent's status with them. The FTB responded that they had issued a citation in August 2009.

FIRST CAUSE FOR DISCIPLINE

(Practice Without a Valid License)

24. Respondent is subject to disciplinary action under section 5100, subdivision (g), in conjunction with sections 5050 and 5051, for unprofessional conduct, in that Respondent willfully practiced and held himself out as a Certified Public Accountant when he failed to have a valid license when he signed an IRS Form 2848, Power of Attorney designating himself a Certified Public Accountant on May 1, 2008, signed an IRS Form 8879 on June 2, 2008 as a CPA, and advertised on his website in 2009 that he is a CPA even though Respondent's license had expired on September 30, 2007. Complainant refers to and by this reference incorporates the allegations as set forth above in paragraphs 12 to 23, as though set forth fully.

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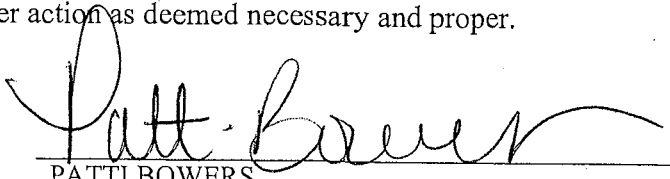
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1 2. Ordering Milliard Christopher Caldwell to pay the California Board of Accountancy
2 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 5107;

4 3. Taking such other and further action as deemed necessary and proper.

5
6 DATED:

February 4, 2011


PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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11 SD2010702685
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